

Exhibit L:

Cited Testimony of
Edward Yourdon

1 "The maintenance business requires a discipline
2 and structure that takes years to develop. Spinnaker is a
3 newborn in that critical area."

4 Is this consistent with what you found about
5 Spinnaker?

6 And lower down it actually says -- it identifies
7 the more significant problem with Spinnaker as being
8 long-term viability.

9 A. Yes, it is.

10 Q. Okay. Please explain.

11 A. Well, in -- as I suggested earlier, Spinnaker
12 acquired a significant number of its customers, about 75,
13 when TomorrowNow discontinued its operations and another 30
14 in an acquisition.

15 So the kind of organic growth that Mr. Potts is
16 referring to here of going out into the battlefield and
17 winning competitive competition for new customers had not
18 been carried out by Spinnaker.

19 And given the relatively small number of
20 companies, about a hundred or so, it would raise serious
21 questions in the mind of any customer considering them as
22 an alternative.

23 Q. It also says, "As near as we can tell, Spinnaker
24 operates at a loss." Would that be consistent with
25 something you might expect?

1 A. Yes. If they're operating at a loss, and if they're
2 a small company, having run a small consulting firm myself,
3 I know that this can raise some significant concerns about
4 long-term viability.

5 Q. Okay. Could customers in this case have supported
6 themselves, what's called self-support?

7 A. In my experience, the realistic answer is no. It is
8 sometimes considered, but it's -- I've never recommended
9 it, and it's almost never a viable option.

10 Q. In your experience as a consultant, have you ever
11 recommended self-support?

12 A. No, I never have recommended self-support for these
13 enterprise software products.

14 Q. Why not?

15 A. Because of the issues we've already talked about.

16 If the self-support is being carried out, as it
17 usually is, by just one or two people, almost by definition
18 they don't have the technical depth that a vendor with
19 thousands of people would have.

20 They don't usually have the access to the source
21 code.

22 And from a business risk perspective, of course,
23 you have to worry that they might disappear for any number
24 of personal reasons, including retirement and just not be
25 available.

1 Q. Okay. So we've just discussed your conclusion that
2 there were no viable alternatives in the third-party
3 support market to Rimini Street.

4 So, in your opinion, and based on your
5 experience, what would Oracle's customers have generally
6 done if Rimini Street had not existed?

7 A. In my opinion, what they generally would have done
8 is renewed their support at the same kind of historical
9 renewal levels that Oracle had already been enjoying.

10 Q. Okay. So this is an important question, and I'd
11 like you to explain why you say that to the jury.

12 A. Well, I say that because whatever other issues a
13 company might consider, at the end of the day they have to
14 ask is there anything else?

15 You know, it's fine to say I might be attracted
16 for this reason or that reason, but without a viable
17 alternative, you might stop the support if you're going
18 bankrupt or if you're being acquired by somebody else or
19 other external factors.

20 But in the absence of those external forces,
21 you're going to stay with the same enterprise support
22 provider.

23 Q. Okay. And is that consistent with your experience?

24 A. Oh, it definitely is consistent with my experience
25 in the industry.

1 Q. And are you generally familiar with Oracle's
2 retention rates for its support customers?

3 A. Yes, I am generally familiar with it. In fact, I
4 think we've seen one or two charts already which I had
5 seen. It's above 90 percent, close to 95 percent.

6 Q. Okay. So you just testified that customers would
7 not have left Oracle for Rimini if Rimini didn't exist.

8 I want to ask you, since Rimini did exist, why
9 did the customers in this case choose to go to Rimini? Did
10 you look at that question?

11 A. I did look at that question, and I -- in my
12 experience, they decided to go with Rimini at the end of
13 the day for two primary reasons that we've summarized on
14 this demonstrative.

15 One was the promise of a significant price
16 discount, and the other was the promise made by Rimini of
17 vendor-level support.

18 Q. And what -- when you say promise of vendor-level
19 support, are you familiar with what Rimini promised the
20 customers that they could do in comparison to what Oracle
21 did?

22 A. My understanding is that there were one or two
23 issues such as security that they may not have talked about
24 very much at all, but fundamentally they promised
25 everything that Oracle did and more.

1 Q. In this case there's already been a fair amount of
2 discussion about the 50 percent or less discount. Just
3 take a second to explain why you've combined that here with
4 the promise of vendor-level support. What's the importance
5 of that?

6 A. I think we've heard throughout this case that these
7 enterprise software products are expensive, and the
8 maintenance and support is expensive, so that a marketing
9 presentation or proposal that involves saving a
10 considerable amount of money is enough to gain one's
11 attention.

12 But unless that's also combined with reliable
13 technical service, at the end of the day a company simply
14 cannot take the risk of switching.

15 Q. Okay. So that has to be also promised as well,
16 you're saying?

17 A. The two together are important.

18 If you make a promise of vendor-level support at
19 the same price, it's certainly not going to gain a lot of
20 attention. But if you offer a significant price discount
21 but don't provide the vendor-level support, then the
22 alternative really isn't there.

23 Q. All right. Let's move on to another topic, which is
24 one of Oracle's claims in this case is that Rimini Street
25 interfered with its customer relationships.

1 So returning to what we talked about at the
2 beginning, which is the process that customers go through
3 when deciding on support, when a customer is evaluating a
4 third-party support provider, what kinds of questions do
5 they ask?

6 A. They ask a number of questions, the first two of
7 which are virtually the same as you saw in the previous
8 demonstrative.

9 But they want clarification and details in
10 writing to fully understand the pricing policies and the
11 technical capabilities they need.

12 The last three bullet points that you see on
13 this demonstrative are often regarded as due diligence.

14 They ask for references, they ask the vendor --
15 the potential third-party support provider whether the
16 support is in compliance with the software license
17 associated with the software product, and then they'll
18 generally ask whether the support and the overall business
19 model is legal.

20 Q. So if a third party makes representations about the
21 legality of their business, do customers rely on those
22 representations from customers?

23 MR. RECKERS: Objection.

24 THE WITNESS: That certainly has been my
25 experience, especially if they --

1 MR. RECKERS: Objection. Beyond the scope of
2 the report and foundation.

3 MS. DUNN: I believe this is covered in
4 paragraph 55 of the report.

5 THE COURT: Based on that, I'll allow him to go
6 forward and would reconsider a motion to strike by
7 Mr. Reckers in the event that you feel that that has
8 occurred.

9 MR. RECKERS: Thank you, Your Honor.
10 BY MS. DUNN:

11 Q. Mr. Yourdon, if a third party makes representations
12 about the legality of their business, do customers rely on
13 such representations?

14 A. That has been my experience, especially if the
15 representation comes from a senior executive of the firm,
16 and especially if it's in writing.

17 Q. Okay. And if the third-party support provider says,
18 "no, sorry, we can't provide the support legally," in your
19 opinion, would the customer move forward?

20 A. No. In my opinion, they would not.

21 Q. In this case, are you aware whether customers asked
22 Rimini Street about the legality of their support services?

23 A. Yes, I am. In the deposition testimony that I
24 reviewed from 17 customers, it was a very common question.

25 Q. Did you also see documents where Rimini Street

1 provided assurances to customers that it was providing
2 support legally?

3 A. Yes, I did.

4 Q. Let's switch gears to this thing in the middle of
5 your slide about references. How important are references
6 to customers?

7 A. In my experience, they are extremely important for
8 companies that are considering a selection -- or a new
9 vendor, particularly, again, for mission-critical
10 applications. It's not as if they can shrug and walk away
11 from it.

12 Q. And in the course of your review, did you also see
13 evidence that providing references was part of Rimini
14 Street's practice for soliciting customers?

15 A. Yes, I did. Yes, I did.

16 Q. Okay. In your opinion, and based on your
17 experience, would these customers have provided references
18 if Rimini Street had told them that they were in violation
19 of copyright laws?

20 A. No. And, again, that was a question that was raised
21 and that I saw in the deposition testimony from the 17
22 customers.

23 Q. All right. So taking a look, then, at all these
24 questions on your list, if customers had asked a
25 combination of any of these questions, and in particular

1 below the historical rate; correct?

2 A. That's correct.

3 Q. Okay. And so it would be fair to say, can we talk
4 about the historical rate as being about 95 percent?

5 A. And that was the -- that's how I intended to convey
6 that, yes.

7 Q. Yes, sir.

8 And so, just so we have a clear record, in your
9 opinion, about 95 percent of Rimini's customers would have
10 stayed with Oracle but for the promise of vendor-level
11 support at a significant discount by Rimini; correct?

12 A. Well, again, precisely what I was saying was that I
13 felt that they would renew it at the historic renewal rates
14 which I tried to summarize or characterize succinctly as
15 approximately 95 percent.

16 Q. Yes, sir.

17 In connection with that analysis, you did not
18 conduct any mathematical or statistical analysis regarding
19 whether Rimini's clients would have renewed at Oracle's
20 historical retention rate, did you?

21 A. No, I did not.

22 Q. Okay. You will agree with me, sir, if the
23 historical retention rate is about 95 percent, that means
24 that 5 percent of the customers leave Oracle every year;
25 correct?

1 A. Yes, from arithmetic, yes, I would agree with that.

2 Q. All right. So in the real world we know that
3 Rimini's customers are not part of the 95 percent that
4 stayed with Oracle, they're part of the 5 percent that
5 left; correct?

6 A. Yes.

7 Q. Okay. So let's talk about that 5 percent that left,
8 or that historically leaves.

9 Would you agree with me, sir, that historically
10 customers with certain characteristics are more likely to
11 leave vendor support?

12 A. No, I don't agree with that.

13 Q. Well, let's talk about what you said in your report.

14 Your report lists factors that customers weigh
15 when considering to renew their maintenance agreements; is
16 that correct?

17 A. Yes, it is.

18 Q. And I'm referring specifically, sir, to page 31 of
19 your report, paragraph 59.

20 A. Yes, I see that.

21 Q. So you list about eight factors that customers
22 consider when making support decisions?

23 A. Yes, that they consider or that they weigh. That's
24 the word that I chose. But, yes.

25 Q. Okay. We'll use your word, they weigh these factors

1 when they're making their support decisions; correct?

2 A. Yes.

3 Q. All right. Mr. Yourdon, we've got a slide, and
4 we're going to go through your different -- your factors
5 from your report.

6 The first factor which I think you talked about
7 on direct was price. So you agree with me, sir, that price
8 is a factor weighed when licensees consider whether to
9 renew their support decisions?

10 A. Yes, I do.

11 Q. Okay. And, in fact, in your report you list several
12 Rimini customers that, from your review of the evidence,
13 weigh price; is that fair?

14 A. Yes, that's fair.

15 Q. Okay. Now, the price isn't the only factor that you
16 wrote -- that you reflect in your report, is it, sir?

17 A. No, it's not.

18 Q. Okay. So the next factor is the reliability -- or
19 the availability of reliable alternatives; is that right,
20 sir?

21 A. Yes.

22 Q. Okay. And, again, this is a factor that is weighed
23 by licensees when considering whether to renew maintenance
24 agreements with their vendor; correct?

25 A. That's correct.

1 Q. And one of the alternatives that at least some of
2 Rimini's customers considered was self-support; correct?

3 A. Yes.

4 Q. And we talked about self-support a little bit during
5 your direct; correct?

6 A. That's correct.

7 Q. And self-support, just to remind the jury, is when
8 the licensee does not have a vendor, they support it
9 themselves with their own personnel; correct?

10 A. Basically that's correct, yes.

11 Q. And so, for example, referring to your case study
12 clients, Pitney Bowes is one of the clients that did not
13 renew it's Oracle support contract and elected to proceed
14 with self-support before going to Rimini Street; is that
15 correct?

16 I'll give you the page if you like.

17 A. Yes, please, if you could.

18 Q. Yes. It's page 70, it's paragraph 132.

19 A. Yes, I see that.

20 Q. So you agree with me that Pitney Bowes elected
21 self-support before going to Rimini Street?

22 A. Well, certainly I see that they elected to proceed
23 with self-support. I'm looking for the -- well, yes, in
24 the following paragraph, Pitney was unwilling to continue
25 running the risks associated with self-support and then

1 moved to Rimini.

2 Q. Exactly. They considered themselves lucky to be
3 able to have self-supported their product. Is that what
4 you said in your report?

5 A. They considered themselves lucky to have avoided the
6 consequences of the risks that they were experiencing with
7 self-support.

8 Q. All right. Nevertheless they self-supported
9 themselves in this case for about a year; is that right?

10 A. Yes, that appears to be the case.

11 Q. Okay. So let's move on to your third bullet point,
12 sir, which is stability or stagnation of the existing ERP
13 system; is that right?

14 A. Yes. So we're back to the list in paragraph 59?

15 Q. Yes.

16 A. Yes.

17 Q. And so the stability, stagnation of existing ERP
18 system is another factor that's weighed by licensees in
19 considering whether to renew maintenance agreements;
20 correct?

21 A. Yes.

22 Q. And there's evidence in this case that at least some
23 of the Rimini customers considered the stability or
24 stagnation of their existing system in making the decision
25 to leave Oracle support; correct?

1 A. Yes, they considered it.

2 Q. Okay. And the next factor, sir, is likelihood of
3 upgrading. So, sir, you list likelihood of upgrading to a
4 newer version as a factor that customers weigh in
5 considering whether to renew maintenance agreements with
6 ERP vendors; is that correct?

7 A. Yes, that's correct.

8 Q. And, again, there's evidence in this case that at
9 least some of the Rimini customers considered this factor
10 when -- the likelihood of upgrading to a newer version in
11 making their support decisions; correct?

12 A. Yes.

13 Q. Again, referring you, sir, to footnote 42 on page
14 32, you cite -- I'm sorry, I'll let you get there. Are you
15 there?

16 A. Oh, yes, I'm on page 32, but I thought you were
17 going to cite a footnote.

18 Q. It's footnote 42 on page 32.

19 A. Oh, got it, yes.

20 Q. Okay. So in this case you cite Hastings
21 Entertainment, J-Pac Travel, JB Hunt, Koch Business
22 Solutions, Sunrise Medical, and YUM Brands as Rimini
23 clients that considered the likelihood of upgrading to a
24 newer version in connection with their support decisions;
25 correct?

1 A. Yes, that's correct.

2 Although ultimately all customers, all
3 companies, in my experience, upgrade. It's simply a
4 question of whether it's this year or next year, you know,
5 or a couple years further down the road.

6 Q. Right. In this case, these customers left Oracle
7 support with consideration to their upgrade plans; correct?

8 A. Let's see. We'll need to look at the footnotes to
9 see whether that --

10 Q. Footnote 42, sir?

11 A. Yeah, footnote 42 says that they considered this
12 factor. I didn't see the closing of the loop, so to speak,
13 indicating that those companies had, in fact, gone to
14 Rimini because that -- that term had to be a determinative
15 factor. I certainly agree that it was a factor that they
16 weighed.

17 Q. Yes, sir. And that was my question.

18 And so moving on to the next factor that you
19 list of the likelihood of moving to a different vendor.
20 Again, this is back on page 32, sir.

21 A. Yes.

22 Q. You list likelihood of moving to a different vendor
23 as a factor weighed in considering whether to renew
24 maintenance agreements with vendors; correct?

25 A. Yes.

1 Q. And, again, there's evidence in this case that some
2 of the Rimini customers considered the likelihood of moving
3 to a different vendor and making the decision to leave
4 Oracle support; correct?

5 A. Yes.

6 Q. In this case, on footnote 42, you cite the AGCO
7 Corporation, Koch Business Solutions, Pitney Bowes and
8 SonicWall as Rimini clients that considered a move to a
9 different vendor in connection with their support
10 decisions; correct?

11 A. It's footnote 43, is it not?

12 Q. That's correct. Sorry if I --

13 A. Yes, I did.

14 Q. So the next factor you list is dissatisfaction with
15 the current vendor; correct?

16 A. Yes.

17 Q. And, again, you list dissatisfaction with the
18 quality of support from the vendor as a factor weighed in
19 considering whether to renew the maintenance agreement with
20 that vendor; correct?

21 A. Yes.

22 Q. And, again, there's evidence in this case that some
23 of the Rimini customers considered their dissatisfaction
24 with Oracle support in making the decision to leave Oracle;
25 correct?

1 A. Yes, that's correct.

2 Q. And, for example, you cite dissatisfaction with the
3 existing vendor is a factor that the City of Flint, County
4 of Kent, SonicWall and Wendy's considered in connection
5 with their support decisions.

6 A. Yes.

7 Q. Is that correct, sir?

8 A. Yes, yes.

9 Q. Okay. Now, the next factor you list is -- has to do
10 with sunseting; is that correct?

11 A. Yes, that's correct.

12 Q. And sunseting is a concern that the vendor may no
13 longer offer support for that client's release, the release
14 that they're running in production; correct?

15 A. Yes.

16 Q. And, in fact, there's evidence in this case that at
17 least some of the Rimini customers consider these sunset
18 concerns in making the decision to leave Oracle; correct?

19 A. Yeah, they considered it, yes, in light of the
20 representations, as I understood it, that were made to them
21 by Rimini that, in fact, this sunseting and stopping of
22 support was something that was a reality from Oracle when,
23 in fact, I believe that that turned out not to be true.

24 Q. Do you know one way or the other as you sit here
25 today?

1 A. Yes, I do know that Oracle will continue supporting
2 the older systems.

3 Q. Right. They have something called sustaining
4 support?

5 A. Yes, that's correct.

6 Q. And those aren't for -- those aren't the -- those
7 aren't updates for -- directed specifically to the older
8 products; correct?

9 A. I'm sorry. Could you repeat that?

10 Q. The sustaining support updates have to be
11 retrofitted to run with an older system, correct, sir?

12 A. I'd have to review the documentation to determine
13 that. I don't recall.

14 Q. Sustaining support also costs 10 percent more, so
15 they're paying more?

16 A. They are paying more. I don't -- I don't know
17 whether the 10 percent figure is correct.

18 Q. You cite Koch Business Solutions and Yum Brands as
19 Rimini clients that considered sunset concerns in making
20 their support decisions, sir?

21 A. Yes, I did.

22 Q. The last bullet point you have is the customization
23 issue. So this is whether or not to the extent that a
24 client's system is customized; correct?

25 A. Yes.

1 Q. And so, again, you list extensiveness of software
2 customization is a factor weighed in considering whether to
3 renew maintenance agreements with ERP vendors; correct?

4 A. Yes.

5 Q. And there's evidence in this case at least some of
6 the Rimini customers that you looked at considered the
7 software customizations in making their decisions to leave
8 Oracle; correct?

9 A. Yes.

10 Q. For example, you cite the Birdville Independent
11 School District as a Rimini client that considered the
12 extent of software customization in connection with their
13 support decision; correct?

14 A. Yes. Yes. This factor, again, and all the others
15 that you've listed, are in the context of an alternative
16 vendor being available.

17 Had one not been available, then these may well
18 have been factors that they would identify and consider and
19 weigh but that would not have resulted in any movement or
20 switch.

21 Q. Well, we know that historically 5 percent of
22 Oracle's customers leave every year regardless, before
23 Rimini and -- well, historically; correct?

24 A. Yes, that's correct. Roughly, yes.

25 Q. And we know from the discussion we've had that every

1 client has different considerations or factors that they
2 weigh in making their support decision; correct?

3 A. Again, within the context, the larger context of the
4 availability of an alternative and the price.

5 Q. Again, every client is different. Will you agree
6 with me on that, sir?

7 A. No. In fact, every client considers all of these
8 factors. Some may be more important this year than next
9 year, but they are universal factors.

10 So in that sense, no, they are not different.

11 Q. Different factors, different factors weigh more
12 heavily per client; correct?

13 A. At a particular point in time, but over the period
14 of the five or six years in this case, I think all of the
15 factors apply to all of the customers.

16 Q. And to understand why a particular client made a
17 support decision, you have to look at each client
18 individually and determine how each of these factors
19 weighed for those -- that client; correct?

20 A. Only, again, within the context of whether there was
21 an alternative that was available. With no alternative, to
22 some extent all of these factors are moot.

23 MR. RECKERS: No further questions. Thank you,
24 Your Honor.

25 THE COURT: Okay. Redirect examination?

1 MS. DUNN: Yes, Your Honor, thank you.

2 REDIRECT EXAMINATION

3 BY MS. DUNN:

4 Q. Mr. Yourdon, defense counsel asked you some
5 questions about the depositions that you reviewed in this
6 case. And you're aware Oracle deposed 17 customers; right?

7 A. Yes, I know.

8 Q. Okay. Are you also aware that the way this works is
9 that Rimini could have deposed any of the 400-some
10 customers they mentioned if they so chose to do that?

11 A. Not being a lawyer, I'm not familiar with the
12 protocol, but it certainly stands to reason.

13 Q. Okay. So in addition to the depositions that you
14 looked at, did you also look at written documents?

15 A. Yes, I did.

16 Q. Okay. And you looked at written documents for about
17 200 customers, is that somewhere in the ballpark?

18 A. Yes, that's approximately correct, yes.

19 Q. Okay. So, in your report you listed a number of
20 factors that customers might consider, but I want to not
21 obscure what I think is really at the heart of your
22 conclusion, which is also in your report. So I'd ask you
23 to turn to page 37 of your report.

24 A. Okay.

25 Q. Okay. And if you look at paragraph 67. You say,

1 "While all of the risks and rewards discussed
2 above may be relevant, the single largest factor in
3 determining whether a customer actually does shift its ERP
4 maintenance contract to a different support provider is the
5 promise of significant cost savings."

6 And then you say,

7 "But even the lure of a deep discount is
8 typically not enough to persuade customers to switch
9 providers without the credible belief that they will
10 receive something approaching vendor-level support."

11 Now, I'd like for you to take the time to
12 explain that to the jury because I want to make sure
13 there's no confusion about your opinion on this.

14 A. I agree with that, and that is what I wrote in this
15 paragraph of my report.

16 And that's what I was trying to convey a moment
17 ago, that there may be particular issues that they take
18 into consideration at any point in time such as
19 customization or any of the eight or nine on the list that
20 you saw.

21 But, at the end of the day, if they don't have
22 something approaching credible, reliable, vendor-level
23 support, then all of this is academic, all of it is moot.

24 You can be unhappy with all kinds of things in
25 your personal life, but if there's no alternative that's --